

## Message Text

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44

ACTION EB-07

INFO OCT-01 EA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

NOTE-00 INR-07 NSAE-00 FAA-00 PM-03 H-02 L-03 NSC-05

PA-01 PRS-01 SP-02 SS-15 USIA-06 /061 W

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R 020900Z JUL 75

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 1307

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E.O. 11652: N/A

TAGS: EAIR, JA

SUBJ: CIVAIR: AIRLINE COMMISSION RATE DISPUTE

REF: (A) STATE 109664 (B) STATE 122855 (C) STATE 124031

(D) TOKYO 6724

SUMMARY. INTERNATIONAL AIR CARRIERS SERVING JAPAN HAVE BEEN INFORMED BY JCAB THAT, EFFECTIVE FROM JUNE 30, COMMISSION RATES PAID IN JAPAN TO AGENTS OR BROKERS MUST BE APPROVED BY THE TRANSPORT MINISTRY. THIS ACTION FOLLOWS RESOLUTION ADOPTED BY AIRLINES (EXCEPT PAN AM) ON MAY 20 SETTING COMMISSION RATES AT 7.5 PERCENT FOR INDIVIDUAL TICKETS AND 10 PERCENT FOR CROUP TOUR SALESM ACTION IS BASED ON ARTICLES 129-2 AND 131-3 OF CIVIL AERONAUTICS LAW, UNDER WHICH TRANSPORT MINISTER HAS AUTHORITY TO ATTACH TERMS AND CONDITIONS TO APPROVALS OF PASSENGER FARES AND CHARGES FILED BY CARRIERS. PAN AM HAS INDICATED TO JCAB THAT IT DOES NOT INTEND TO COMPLY WITH JCAB REQUEWT TO FILE COMMISSION RATES AND HAS SOUGHT EMBASSY SUPPORT. IN ACCORDANCE PARA 8 REF B WE HAVE ONLY DISCUSSED MATTER INFORMALLY WITH JCAB.

ACTION REQUESTED. ASSUME DEPARTMENT WOULD TAKE SAME POSITION WITH GOJ AS THAT TAKEN WITH U.K. (REF C) IN ARGUING THAT EVEN THOUGH GOJ MIGHT HAVE LEGAL AUTHORITY  
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TO REGULATE COMMISSION RATES PAID TO AGENTS IN JAPAN,

ANY RETALIATORY ACTION AGAINST PAN AM FOR REFUSING TO COMPLY WITH SUCH REGULATION WOULD DEPRIVE U.S. OF BENEFITS UNDER BILATERAL AIR AGREEMENT AND THUS BE VIOLATION OF THAT AGREEMENT. WE WILL MAKE FORMAL REPRESENTATION ON THAT BASIS IF SO INSTRUCTED. PLEASE ADVISE. END SUMMARY.

1. AS REPORTED IN REF D, INTERNATIONAL AIR CARRIERS SERVING JAPAN (EXCEPT PAN AM) AGREED ON AMY 20 TO CHARGE UNIFORM AGENCY COMMISSION RATE OF 7.5 PERCENT FOR SALES IN JAPAN OF INDIVISUAL PASSENGER TICKETS AND 10 PERCENT FOR SALE OF INCLUSIVE TOURS. IN FOLLOW-UP

ACTION, JCAB HAS NOW INSTRUCTED CARRIERS TO FILE THEIR COMMISSION RATES FOR APPROVAL BY TRANSPORT MINISTER. DEADLINE FOR FILING CURRENT RATES WAS JUNE 30 AND, ACCORDING TO JCAB OFFICIAL, MOST CARRIERS (INCLUDING NORTHWEST BUT NOT PAN AM) HAD FILED THEIR RATES BY THAT DATE.

2. JCAB INSTRUCTION TO CARRIERS WAS IN FORM OF CONDITION ATTACHED TO PREVIOUS APPROVALS OF PASSENGER FARES FILED IN ACCORDANCE WITH ART 129-2 OF CIVIL AERONAUTICS LAW. ATTACHEMENT OF SUCH CONDITIONS, ACCORDING TO JCAB, IS AUTHORIZED BY ART 131-3 OF LAW.

3. PAN AM APPARENTLY IS ONLY FOREIGN CARRIER WHICH HAS QUESTIONED JCAB'S AUTHORITY TO REQUIRE COMMISSION RATE FILINGS. PAN AM/TOKYO REP TOLD EMBOFF THAT PAN AM VICE PRESIDENT FOR PACIFIC REGION (EDWARD SWOFFORD) INFORMED JCAB ON JUNE 25 THAT PAN AM WOULD NOT REPEAT NOT COMPLY WITH FILING REQUEST, AND JCAB (YAMADA, DIRECTOR OF INTERNATIONAL AFFAIRS DIVISION) WARNED PAN AM THAT FAILURE TO COMPLY WOULD BE VIOLATION OF CIVIL AERONAUTICS LAW. IN SUBSEQUENT INFORMAL DISCUSSION WITH YAMADA AND TOYA, LATTER TOLD EMBOFF THAT JCAB HAD ASKED PAN AM TO RECONSIDER ITS POSITION AND THAT JCAB HOPED THAT PAN AM WOULD BE QTE COOPERATIVE UNQTE.

4. JCAB OFFICIALS HAVE STATED TO EMBASSY THAT PURPOSE LIMITED OFFICIAL USE

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OF REQUIRING CARRIERS TO FILE THEIR COMMISSION RATES IS TO GIVE JCAB OPPORTUNITY TO ENFORCE A UNIFORM RATE PAYABLE TO AGENTS IN JAPAN. (JCAB DISAVOWS ANY DESIRE OR INTENTION TO ATTEMPT REGULATION OF COMMISSIONS PAID OUTSIDE JAPAN.) WE ASSUME THAT POSITION TAKEN BY USG WHEN SIMILAR SITUATION WAS AT ISSUE WITH U.K., COULD ALSO FORM BASIS FOR OFFICIAL REPRESENTATION TO GOJ. IN THIS CONNECTION, WE INTERPRET PARA 1 OF REF C TO MEAN

THAT EVEN IF USG CONCEDES GOJ'S RIGHT TO REGULATE COM-  
MISSIONS PAID IN JAPAN, THE EXERCISE OF THAT RIGHT COULD  
RESULT IN VIOLATION OF US/JAPAN AIR TRANSPORT AGREEMENT.  
IF THIS IS CORRECT INTERPRETATION, AND IF WE ARE IN-  
STRUCTED TO SUPPORT PAN AM ON THAT BASIS, WOULD APPRE-  
CIATE DEPARTMENT'S VIEWS AS TO WHETHER GOJ REQUIREMENT  
TO FILE RATES IN ITSELF CONSTITUTES POTENTIAL  
VIOLATION OF AGREEMENT, OR WHETHER SOME FURTHER ACTION--  
SUCH AS DISAPPROVAL OF FILED RATES--WOULD BE  
DECIDING FACTOR.  
HODGSON

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** TREATY VIOLATION, INCENTIVE WAGE SYSTEMS, AIRLINES, NEGOTIATIONS, LABOR DISPUTES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 02 JUL 1975  
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**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** ShawDG  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
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